

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

GERALD DEWAYNE BREWSTER,)	
)	
Petitioner,)	
)	
v.)	Case No.: 4:21-cv-00557-AKK-JHE
)	
STATE OF ALABAMA, et al.,)	
)	
Respondents.)	

MEMORANDUM OPINION

On May 20, 2021, the magistrate judge entered a Report and Recommendation, recommending that the petition for writ of habeas corpus be dismissed without prejudice for lack of jurisdiction because it is successive. Doc. 5. Gerald Dewayne Brewster filed two affidavits objecting to the Report and Recommendation. Docs. 6; 7.

Brewster argues that his current petition is not successive because the state courts failed to address his claims on the merits. *See* docs. 6 at 2; 7 at 2-3. The remainder of the petitioner's objections argue the merits of his claims. However, this court's jurisdiction over this petition does not depend on the state courts' disposition of the petitioner's claims or their merits. As the magistrate judge found, the petitioner challenged the same conviction he challenges here in a previous petition under 28 U.S.C. § 2254. *See Brewster v. Boyd*, Case No. 2:09-cv-00631-

RDP-JEO (N.D. Ala.). The court denied that petition after an evidentiary hearing. *Id.* at docs. 37; 39; 40. Under those circumstances, any subsequent petition is successive. *Guenther v. Holt*, 173 F.3d 1328, 1329 (11th Cir. 1999). Since the petitioner has not obtained an order from the Eleventh Circuit Court of Appeals authorizing him to file a successive petition, this court lacks jurisdiction over the current petition. *See Burton v. Stewart*, 549 U.S. 147, 153 (2007).

The court has considered the entire file in this action, together with the report and recommendation, and has reached an independent conclusion that the report and recommendation is due to be adopted and approved. Accordingly, the court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of this court. The petition for writ of habeas corpus is due to be **DISMISSED WITHOUT PREJUDICE**. A separate Order will be entered.

DONE the 8th day of June, 2021.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE